

SENATE BILL 717

Unofficial Copy
N1

2000 Regular Session
0lr2271
CF 0lr2270

By: **Senator McFadden (Baltimore City Administration) and Senators
Hughes and Mitchell**

Introduced and read first time: February 4, 2000

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2000

CHAPTER_____

1 AN ACT concerning

2 **Real Property - Abatement of Nuisance - Controlled Dangerous Substances**

3 FOR the purpose of clarifying that under provisions of law that relate to nuisance
4 abatement, an "owner" includes an owner-occupant and a "tenant" does not
5 include the owner of the property; requiring a plaintiff who brings a certain
6 nuisance abatement action to post a certain notice in a conspicuous place on the
7 property on which the nuisance is located within a certain amount of time before
8 the hearing; authorizing the court, after a hearing, to order a tenant who knew
9 or should have known of the existence of certain nuisances to vacate the
10 property within a certain amount of time; clarifying that in certain nuisance
11 abatement actions the court may, after a hearing, grant a judgment of
12 restitution or the possession of rental property to the property owner if certain
13 conditions are met; clarifying that a court may order an owner of certain
14 property to submit for court approval a certain plan of correction in addition to
15 or as part of any injunction, restraining order, or other relief ordered by the
16 court; authorizing the court to impose certain additional sanctions if an owner
17 fails to comply with an order to abate a nuisance; ~~authorizing the court to award~~
18 ~~court costs and reasonable attorney's fees to a prevailing plaintiff in certain~~
19 ~~nuisance abatement actions~~; requiring that certain requests for oral arguments
20 be filed within a certain amount of time; requiring that certain oral arguments
21 be heard within a certain amount of time; providing that certain provisions of
22 law are not applicable to certain nuisance abatement actions; repealing certain
23 expedited notice and appeal requirements; and generally relating to the
24 abatement of nuisances based on the manufacture, distribution, or storage of
25 controlled dangerous substances or controlled paraphernalia.

26 BY repealing and reenacting, with amendments,

1 Article - Real Property
2 Section 14-120
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1999 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - Real Property**

8 14-120.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) "Community association" means:

11 (i) A nonprofit association, corporation, or other organization that
12 is:

13 1. Comprised of residents of a community within which a
14 nuisance is located;

15 2. Operated exclusively for the promotion of social welfare
16 and general neighborhood improvement and enhancement; and

17 3. Exempt from taxation under § 501(c)(3) or (4) of the
18 Internal Revenue Code; or

19 (ii) A nonprofit association, corporation, or other organization that
20 is:

21 1. Comprised of residents of a contiguous community that is
22 defined by specific geographic boundaries, within which a nuisance is located; and

23 2. Operated for the promotion of the welfare, improvement
24 and enhancement of that community.

25 (3) "Controlled dangerous substances" has the meaning stated in Article
26 27, § 279(a) and (b) of the Code.

27 (4) "Nuisance" means a property that is used:

28 (i) By persons who assemble for the specific purpose of illegally
29 administering a controlled dangerous substance;

30 (ii) For the illegal manufacture, or distribution of:

31 1. A controlled dangerous substance; or

1 2. Controlled paraphernalia, as defined in Article 27, §
2 287(d) of the Code; or

3 (iii) For the illegal storage or concealment of a controlled dangerous
4 substance in sufficient quantity to reasonably indicate under all the circumstances an
5 intent to manufacture, distribute, or dispense:

6 1. A controlled dangerous substance; or

7
8 287(d) of the Code.

2. Controlled paraphernalia, as defined in Article 27, §

9 (5) "OWNER" INCLUDES AN OWNER-OCCUPANT.

10 [(5)] (6) "Property" includes a mobile home.

11 [(6)] (7) (i) "Tenant" means the lessee or a person occupying property,
12 whether or not a party to a lease.

13 (ii) "Tenant" includes a lessee or a person occupying a mobile home,
14 whether or not a party to a lease.

15 (iii) "Tenant" does not include:

16 1. THE OWNER OF THE PROPERTY; OR

17 2. [a] A mobile home owner who leases or rents a site for
18 residential use and resides in a mobile home park.

19 (b) An action under § 4-401 of the Courts Article to abate a nuisance may be
20 brought by:

21 (1) The State's Attorney of the county in which the nuisance is located;

22 (2) The county attorney or solicitor of the county in which the nuisance is
23 located; or

24 (3) A community association within whose boundaries the nuisance is
25 located.

26 (c) (1) An action may not be brought under this section concerning a
27 commercial property until 45 days after the tenant, if any, and owner of record receive
28 notice from a person entitled to bring an action under this section that a nuisance
29 exists.

30 (2) The notice shall specify:

31 (i) The date and time of day the nuisance was first discovered; and

32 (ii) The location on the property where the nuisance is allegedly
33 occurring.

1 (3) The notice shall be:

2 (i) Hand delivered to the tenant, if any, and the owner of record; or

3 (ii) Sent by certified mail to the tenant, if any, and the owner of
4 record.

5 (d) (1) In addition to any service of process required by the Maryland Rules,
6 the plaintiff shall cause to be posted in a conspicuous place on the property [within]
7 NO LATER THAN 48 hours [of filing the complaint] BEFORE THE HEARING the notice
8 required under paragraph (2) of this subsection.

9 (2) The notice shall indicate:

10 (i) The nature of the proceedings;

11 (ii) The time and place of the hearing; and

12 (iii) The name and telephone number of the person to contact for
13 additional information.

14 (e) The court may issue an injunction or order other equitable relief whether
15 or not an adequate remedy exists at law.

16 (f) (1) Notwithstanding any other provision of law, and in addition to or as a
17 component of any remedy ordered under subsection (e) of this section, the court, after
18 a hearing, may order a tenant [with knowledge] WHO KNEW OR SHOULD HAVE
19 KNOWN of the existence of the nuisance to vacate the property within 72 hours.

20 (2) The court, after a hearing, may grant a judgment of restitution or the
21 possession of [the] RENTAL property to the owner if:

22 (i) The owner and [lessee] TENANT are parties to the action; and

23 (ii) A tenant has failed to obey an order under subsection (e) of this
24 section or paragraph (1) of this subsection.

25 (3) If the court orders restitution of the possession of the property under
26 paragraph (2) of this subsection, the court shall immediately issue its warrant to the
27 sheriff or constable commanding execution of the warrant within 5 days after
28 issuance of the warrant.

29 (4) [The] IN ADDITION TO OR AS A PART OF ANY INJUNCTION,
30 RESTRAINING ORDER, OR OTHER RELIEF ORDERED, THE court may order the owner of
31 the property to submit for court approval a plan of correction to ensure, to the extent
32 reasonably possible, that the property will not again be used for a nuisance if:

33 (i) The owner is a party to the action; and

34 (ii) The owner knew ~~OR SHOULD HAVE KNOWN~~ of the existence of
35 the nuisance.

1 (5) IF AN OWNER FAILS TO COMPLY WITH AN ORDER TO ABATE A
2 NUISANCE, AFTER A HEARING THE COURT MAY, IN ADDITION TO ANY OTHER RELIEF
3 GRANTED, ORDER:

4 (I) THAT ALL TENANTS VACATE THE PROPERTY;

5 (II) THAT THE PROPERTY REMAIN UNOCCUPIED, CLEAN, AND
6 SECURE AGAINST ENTRY DURING THE LIFE OF THE ORDER;

7 (III) THAT THE PROPERTY BE REHABILITATED TO COMPLY WITH
8 APPLICABLE BUILDING CODES AND ORDINANCES; OR

9 (IV) THAT THE PROPERTY BE DEMOLISHED IF THE ESTIMATED
10 COST OF REHABILITATION SIGNIFICANTLY EXCEEDS THE ESTIMATED MARKET
11 VALUE OF THE PROPERTY AFTER REHABILITATION.

12 (g) Except as provided in subsection (f) (1) and (4) of this section, the court
13 may order appropriate relief under subsections (e) and (f) of this section without proof
14 that a defendant knew of the existence of the nuisance.

15 (h) In any action brought under this section:

16 (1) Evidence of the general reputation of the property is admissible to
17 corroborate testimony based on personal knowledge or observation, or evidence seized
18 during the execution of a search and seizure warrant, but shall not, in and of itself, be
19 sufficient to establish the existence of a nuisance under this section; and

20 (2) Evidence that the nuisance had been discontinued at the time of the
21 filing of the complaint or at the time of the hearing does not bar the imposition of
22 appropriate relief by the court under subsections (e) and (f) of this section.

23 (i) The court may award court costs and reasonable attorney's fees to a
24 {community association that is the} prevailing plaintiff in an action brought under
25 this section.

26 (j) An action under this section shall be heard within 14 days after service of
27 process on the parties.

28 (k) This section does not abrogate any equitable or legal right or remedy under
29 existing law to abate a nuisance.

30 (l) (1) An appeal from a judgment or order under this section shall be filed
31 within 10 days after the date of the order or judgment.

32 [(2) (i) Upon motion of either party, the circuit court shall set a date for
33 the hearing of the appeal, which shall be not less than 5 or more than 15 days after
34 the date the motion is filed.

35 (ii) Notice of the order for a hearing shall be served on the opposite
36 party or the party's attorney at least 20 days before the hearing.]

1 (2) IF EITHER PARTY FILES A REQUEST FOR ORAL ARGUMENT, THE
2 COURT SHALL HEAR THE ORAL ARGUMENT WITHIN 7 DAYS AFTER THE REQUEST IS
3 FILED.

4 (3) (I) IF THE APPELLANT FILES A REQUEST FOR ORAL ARGUMENT,
5 THE REQUEST SHALL BE FILED AT THE TIME OF THE FILING OF THE APPEAL.

6 (II) IF THE APPELLEE FILES A REQUEST FOR ORAL ARGUMENT,
7 THE REQUEST SHALL BE FILED WITHIN 2 DAYS OF RECEIVING NOTICE OF THE
8 APPEAL.

9 (M) PROVISIONS OF THE REAL PROPERTY ARTICLE OR PUBLIC LOCAL LAWS
10 APPLICABLE TO ACTIONS BETWEEN A LANDLORD AND TENANT ARE NOT
11 APPLICABLE TO ACTIONS BROUGHT AGAINST A LANDLORD OR A TENANT UNDER
12 THIS SECTION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2000.